UNIVERSITY OF EDINBURGH.

International Arbitration: The Rectorial Address of Sir Robert Finlay, K.C., M.P., Attorney-General.

Printed and Published at the
STUDENT OFFICE, DARIEN PRESS,
EDINBURGH, 1901.

SIXPENCE NETT.

UNIVERSITY OF EDINBURGH.

International Arbitration: The Rectorial Address of Sir Robert Finlay, K.C., M.P., Attorney-General.

Printed and Published at the
STUDENT OFFICE, DARIEN PRESS,
EDINBURGH, 1904.

International Arbitration

My first duty is to return you my very sincere thanks for the high honour you have done me in electing me as Rector of this great University. There is, I believe, no one who would not be proud of the distinction which your suffrages confer. Need I say, what it is to me? My sense of the honour of the position is inextricably intertwined with memories of days spent here among students of a former generation, of Professors now departed, of early friendships, of those debates in which we prepared ourselves for the battle of life which still lay before us, of Rectorial contests in which I took part, not as a candidate, but as an elector. It seems but yesterday since, as a student, I listened to the Rectorial Address of the first of your Rectors, Mr Gladstone. I have perhaps to-day special reason to indulge in the wish, "Could Time, his flight reversed, restore the hours"—those hours in which on such an occasion as this it was my privilege to be a listener only. But I trust I can rely on your indulgence to one who at least yields to none of those great men who have preceded him, in affection for our University and in the earnest desire that its great traditions may be handed down unimpaired to future generations.

I cannot but feel that a tinge of sadness is thrown over this occasion by the fact that the death of your last Lord

Rector during his term of office is still fresh in the memories of all of us. It is not for me to speak of the many public services of that very distinguished man Lord Dufferin. With his country, we deplore his loss.

The echoes of his last speech, when as Lord Rector he addressed you here, have hardly died away. May I recall another occasion on which at a sister University Lord Dufferin spoke on some questions, connected with education, which are still burning? In that brilliant address he stated emphatically his opinion that the classical languages must continue to form an essential part of education, but added some observations, which are well worthy of attention, upon the method in which they are taught. He told the students whom he was addressing that, in his own case, after fourteen years at school and college devoted to the study of Latin and Greek, he had a very slender knowledge of either, but that in later life he set about learning Greek as he would have set about learning any modern language, with the result that in a comparatively short time he was able to read Greek as easily as French.

If classical education is in any danger, it is due to the paucity of our results in the case of the average youth, as compared with the infinity of our pains. But threatened institutions live long, and I trust that it is so with classical education in this country. No

translation can enable you to realise the grandeur and the pathos of the Iliad—the delight of battle

"Far on the ringing plains of windy Troy."

No translation can reproduce

"All the charm of all the muses
often flowering in a lonely word,"

which you find in the pages of Virgil.

We live in an age of examinations. Some of us find them a weariness to the flesh, and they result sometimes, but I hope not with many of you, in vanity and vexation of spirit. It is interesting to recall that at a time when this University had attained the highest pitch of fame and world-wide celebrity, examinations had, at least in the Faculty of Arts, fallen into almost entire disuse. Edinburgh University has always recognised that the true function of a University is to teach. A degree should denote, and has always denoted here, not merely that the recipient possesses a certain amount of knowledge on the day of examination, but that he has gone through a course of academic training. Examination is useful, indeed necessary, in order to ascertain whether the student is really passing through such a course of mental discipline, and without it his attendance at the required classes might become a mere form. But the function of examination ought always to be subsidiary to the function of teaching. The examination system is a good servant but a bad

master. It is an unhealthy symptom if the true work of any University, the work of training the intellect, is ever subordinated to the question what studies will pay best in the Examination Hall. The real test of fitness to enter any profession is not to be found in the possession of a certain amount of information at the moment of passing the threshold, but in the fact that the candidate has passed through a suitable course of intellectual discipline. It is fatal to all the best teaching if the enthusiasm of teacher and taught is to be chilled by the reflection that a particular line of thought or of study, however inspiring and however ennobling, may perhaps not be the best adapted to ensure success in the Schools.

You may possibly think that the observations which I have ventured to make as to the tyranny of examinations have been prompted by recollections of my own student days. Those days are, indeed, very vividly recalled to me by the audience which I have the honour of addressing, and by the presence at my side of my old friend and teacher, your Principal, Sir William Turner. But from such academic topics I turn to one which is more immediately associated with the active work of life.

I had hoped to address you last November, but this was rendered impossible by the fact that I was engaged during the autumn as counsel for Great

Britain upon two cases of International Arbitration, one of them as to the boundaries of Alaska, and the other as to the competing claims against Venezuela.

As such subjects have naturally been a good deal in my mind, it may be regarded as not unsuitable that I should lay before you some thoughts which have occurred to me upon International Arbitration and some allied topics which have been closely connected with it in history. The theoretical interest of the subject of International Arbitration is great, its literature enormous; it has been intimately associated in the past with ambitious schemes of International control, and with speculations, some of which seem to us nowadays very fantastic. Its history reaches back to the earliest times of classical antiquity and runs through the Middle Ages, and in our own time the subject has assumed proportions little dreamt of half a century ago. It has a great practical interest, for, with some necessary limitations, there is no doubt that Arbitration is destined to play an increasing part in the history of nations.

The establishment of the permanent Tribunal at the Hague has been an object-lesson for Europe and for the world. It was indeed a striking spectacle that was presented at the Hague last November. In that picturesque little capital, so rich in historical asso-

ciations, and where at every turn one is reminded of the mighty dead, there were gathered together the representatives of eleven different nations, of various races and languages, from the old world and the new, for the purpose of submitting their differences to the friendly arbitrament of the Tribunal which will be for ever associated with the name of the Hague.

It was said by Franklin, "We make daily great improvements in natural, there is one I wish to see in moral philosophy, the discovery of a plan which will induce and oblige nations to settle their disputes without first cutting one another's throats." It was in the year 1780 that Franklin wrote these words, and his language seems to imply that the remedy which he longed for had not yet been found. It is indeed a remarkable fact that International Arbitration, as a means of preventing those sanguinary methods which he deprecated, had fallen into almost complete disuse in the sixteenth, seventeenth, and eighteenth centuries. Its efficacy had, however, been proved long before the time of Franklin, though it must be admitted that the method which he desiderated of obliging nations so to settle their differences is still to seek.

It is not surprising that among the communities of ancient Greece the necessity for some mode of peaceful solution of disputes should have been

realised. The country was divided among a large number of petty States, allied indeed by blood, by language, by religion, by association in the national games, by a common contempt for their Barbarian neighbours, but frequently at war with one another—war which would have been perpetual had there been no means of adjusting those disputes which were constantly arising. Thucydides puts into the mouth of a Spartan king the sentiment that it is not lawful to treat as a wrong-doer one who is ready to arbitrate, and what we should call an arbitration clause was a common feature in Greek treaties. The records of Greek history present many instances of recourse to arbitration. Sometimes the arbitrator selected was a friendly State—sometimes one who had attained the distinction which was most prized in Greece, that of winner at the Olympic Games—sometimes the Delphic Oracle.

Accounts have come down to us of the earliest perhaps of those arbitrations, which took place about six hundred years B.C. One of those wars so frequent in the history of Greece, insignificant in their scale, but romantic in their incidents, and often fraught with grave issues for the future of the world, had broken out between Athens and Megara. Each claimed the right to the possession of an island bearing a name which was destined to become immortal, Salamis. The war languished, and

the Athenians became so weary of it, that they are said to have passed a law condemning to death any one who proposed that it should be renewed. But the possession of Salamis was to Athens a matter of life and death. There was one man, and one only, in Athens, who saw this clearly, Solon, the law-giver. I will not stop to remind you of the picturesque stratagem by which he is said to have goaded his countrymen into action, without incurring the penalty of the law. The war was resumed, and when it had gone on for a long time both sides agreed to refer the dispute to the decision of five Lacedæmonian arbitrators, whose names have been preserved by Plutarch. The arguments used before this tribunal sound strangely in modern ears. The sons of Ajax, who fought and died at Troy, had, it was said, became Athenian citizens, and had presented the island to the Athenians. Athens was the chief city of the Ionian race, and the Delphic Oracle had once spoken of Salamis as Ionian. The dead in the tombs of Salamis were found to have been laid out towards the west after the Athenian, and not towards the east after the Megarian fashion. But the decisive argument remained. Both sides appealed to the canonical authority of Homer. The controversy raged around one passage in the Catalogue of the ships, but the litigants were not agreed as to the

true text. The Megarians brought forward a couplet, which, if genuine, showed that Salamis had been classed with towns of Megaris. Solon, on the other hand, recited to the arbitrators a passage containing the famous verse in which Ajax is said to have ranged the twelve ships which he brought from Salamis alongside of the Athenians—a verse which Solon himself is said to have interpolated. The arbitrators rose above all racial prejudices, and adjudged the island to Athens.

There was one celebrated institution in ancient Greece which has been regarded by some authors as intrusted with the function not merely of inducing but of compelling submission to arbitration. The Amphictyonic Council has been spoken of as *commune Græciæ consilium*, as the States General of Greece, as clothed with power to decide upon disputes between States and to enforce its decisions. But little trace is to be found in history of its exercise of any such exalted functions. The Amphictyonic League was a confederacy of races dating from the earliest times, and ultimately embracing the most powerful of the Greek States. It was in its essential features a religious association, formed for the protection of the temples of Apollo and Demeter. One of the aims of the confederacy was to mitigate the horrors of war between the various States which

it embraced. The quaint form of oath has been preserved by Æschines. By it the members swore that they would never destroy an Amphictyonic town, that they would never cut it off from running water, either in peace or in war, and that if any one made spoil of the treasure of the God, they would punish him with hand and foot and voice and all their might.

For the enforcement of its decrees the Amphictyonic Council, like the Pope when he intervened in the disputes of princes in the Middle Ages, had at its disposal only spiritual weapons. To be excluded from the Pythian Games and the temple at Delphi was a sentence of excommunication. But the Council from time to time called in the aid of the secular arm, and it made a memorable and disastrous contribution to Greek history by the part it played in accelerating the subjugation of Greece by invoking the aid of Philip of Macedon in the second and third Sacred Wars.

Two curious instances of submission to the arbitration of the Amphictyonic Council are recorded, but it did little if anything in the way of promoting peace among the communities of Greece. *Stat magni nominis umbra.*

To the history of International Arbitration the Romans contributed little or nothing. While they were making their conquests, they were little disposed to submit their claims to any

arbitrament but that of the God of battles. They were never troubled with any doubts as to the justice of their wars. Cases justifying the verdict—*Eas res puro pioque duello repetundas censeo*—were, as Hallam says, prodigiously frequent in the opinion of the Romans. When their conquests had been completed, there were no nations left to arbitrate with. The *Pax Romana* reigned throughout the world, and the Senate or Cæsar were its supreme arbiters.

There is, indeed, one institution dating from the earliest times of Roman history, the importance of which, as bearing on International Arbitration and International Law, has been exaggerated as much as that of the Amphictyonic Council. Some modern authors have found in the *Fetiales* a permanent tribunal of Arbitration between Rome and other nations, to whose decision based on the principles of International Law was referred the question of the justice or the injustice of every war before it was undertaken. Bossuet speaks of them as a holy institution which puts to shame those Christians into whom even their religion has not been able to inspire charity and peace. A distinguished modern author on International Law (Calvo) says: "Among the Romans no war was declared without the intervention of the Fetiales, whose principal mission, according to Plutarch, was not to per-

mit hostilities before every hope of obtaining arbitration was extinguished."

It has, however, been shrewdly remarked that there is not a single instance in Roman history in which the *Fetiales* pronounced unjust any war on which their country was bent. Their real function was that of fulfilling those curious formalities in the declaration of war and in the conclusion of peace, which to the Roman mind were so essential. It is on points of form only that we find them consulted, and the *Jus Fetiale*, which some have supposed to be synonymous with International Law, was in fact concerned only with its procedure. Whatever the origin of the institution, its function was but to lend the sanction of form to that upon which the Senate and the people of Rome had determined.

The greatness of Rome and the permanence of her empire formed the inspiration of the greatest of Roman poets. In his majestic lines we still can realise that passion of empire which ennobled the Roman race.

"Now, thy Forum roars no longer, fallen every purple Cæsar's dome—
Tho' thine ocean-roll of rhythm sound for ever of Imperial Rome."

Even after "the fierce giants of the North" had broken in, men could not believe that the Empire of Rome had indeed come to an end. They had believed it eternal—*Imperium sine fine dedi*—and its traditions were trans-

ferred to Emperors elected beyond the Alps.

That the Emperor was indeed the heir of all the prerogatives of Imperial Rome was throughout the Middle ages assumed as too clear for argument. In that most curious of treatises, *De Monarchiâ*, Dante devotes himself to proving that there must be one Sovereign or Emperor supreme above all others—that God had given the sovereignty of the world to the people of Rome, and that the Emperor as wielding that authority was independent of the Pope.

In Dante's view universal monarchy is necessary for the good of mankind. He argues that there must be some means of deciding, and deciding authoritatively, controversies between different States. "It is manifest," he says, "that there may be controversy between any two princes where the one is not subject to the other, either from the fault of themselves or even of their subjects. Therefore between them there should be means of judgment, and since when one is not subject to the other, he cannot be judged by the other (for there is no rule of equals over equals), there must be a third power of wider jurisdiction within the circle of whose laws both may come . . . we must come to that judge who is first and highest, by whose judgments all controversies must be directly or indirectly decided, and he will be Monarch or Emperor. Monarchy is therefore neces-

sary to the world, and this the philosopher saw when he said, "The world is not intended to be disposed in evil order, 'in a multitude of rulers there is evil, therefore let there be one Prince.'"*

That this monarchy was given by God to the people of Rome Dante proves in many ways. Æneas, the father of the Roman people, was the most virtuous of men. The people of Rome were the noblest of all peoples, and were rightly preferred over all others. The portents of Roman story, vouched by Virgil and by Livy, attested the favour of Heaven. That holy, pious, and glorious people, *Populus ille sanctus pius et gloriosus*, sought but the good of the world in subduing it. The Romans won the world by the wager of battle, which declared the judgment of God, and Dante actually says, referring to the crown of empire, that the Roman may say with the Apostle, "*Reposita est mihi corona justitiæ, reposita scilicet in Dei providentiâ æternâ.*"†

In thus establishing the right of the people of Rome to universal dominion, Dante assumed that he had established the same right as still existing in the Emperor. In his eyes, the Emperor was still the chosen of God. The only function of the so-called Electors was to declare the will of God. "*Solus eligit Deus, solus ipse confirmat,*"‡ and

* *De Monarchiâ* (Church's translation), book i., chap. 10.

† *Ibid.*, ii. 11. ‡ *Ibid.*, iii. 16.

in the Emperor, so divinely appointed, were vested all the rights of the Roman people to the dominion of the world.

This curious treatise must for ever be interesting as affording a glimpse into a world of thought which seems so strange to us, and as picturing the intense convictions of one of the greatest of men.

The Emperor was no mere arbitrator whose jurisdiction reposed upon consent. His claim was that he stood above all other kings of Europe, and was entitled to regulate and coerce them. "Placed in the midst of Europe," says Mr Bryce, "the Emperor was to bind its tribes into one body, reminding them of their common faith, their common blood, their common interest in each other's welfare. And he was therefore above all things, professing indeed to be upon earth the representative of the Prince of Peace, bound to listen to complaints, and to redress the injuries inflicted by sovereigns and peoples upon each other, to punish offenders against the public order of Christendom; to maintain through the world, looking down as from a serene height upon the schemes and quarrels of meaner potentates, that supreme good without which neither arts nor letters, nor the gentler virtues of life can rise and flourish."

It was a noble dream, but it never was translated into fact. A vague predominance among the princes of Europe was indeed accorded to the

Emperor, but his claims were merely the after-glow of that sun of Roman empire which had set for ever—

> "As mournful light
> That broods above the fallen sun,
> And dwells in heaven half the night."

The influence of the Holy Roman Empire dwindled, until in the eighteenth century Voltaire but expressed the sentiment of Europe, when he said that it was neither Holy, nor Roman, nor an Empire.

Much more real than the majestic, but shadowy, pretensions of the Empire was the influence exerted in mediæval Europe by the Papacy. The Pope claimed to be the supreme judge among kings, not by consent, but as of right. These claims play a great part in the history of the Middle Ages. They were sometimes acquiesced in, sometimes resisted. They were never resisted with more spirit than by the Parliament of Scotland, held at Aberbrothock in the year 1320, after the Pope had issued a Bull in support of the pretensions of Edward II. to the sovereignty of Scotland. The reply of the Scottish Parliament was couched in a strain of unusual vigour. They informed the Pope that if he encouraged the English in their aggression he would be held responsible to God for the loss of life which would ensue, for, said this memorable document, "as long as a hundred Scotsmen are left alive, we

will never be subject to the dominion of England."

Instances are not wanting in which the Pope was, by consent of the parties, selected as arbitrator to decide international disputes, but he assumed a jurisdiction far transcending that of a mere arbitrator. The most celebrated instance of this is to be found in the Bull by which Alexander VI. in 1493 drew an imaginary line from one pole to the other, and by it divided between Spain and Portugal the territory discovered in the New World. Towards the close of the eighteenth century, this Bull was urged by Spain, in support of her pretensions to the north-west coast of America, including the territory which formed the other day the subject of the Alaska Arbitration—pretensions which culminated in the seizure in 1789 of British vessels at Nootka Sound, and brought the two countries to the verge of war. At the end of the nineteenth century, in the Arbitration as to the frontiers of Venezuela and British Guiana, one of the arguments in favour of Venezuela was based on this Bull, as a judicial decision by the supreme Judge of Christendom. "During the Middle Ages," it was said in the Venezuelan Counter case, "and until after the discovery of America, the Pope was the recognised arbiter of the civilised world. His word was in those days supreme." But, on the other hand, only thirty years after it was issued this Bull was

treated with scant respect by the King of France, Francis I. "What!" he said, "the King of Spain and the King of Portugal quietly divide between them all America, without allowing me as their brother to take a share. I should much like to see the article in Adam's will which gives them this vast inheritance."

By the beginning of the seventeenth century the influence of the Papacy as the arbiter of Europe had waned. The controlling power claimed for the Holy Roman Empire had never been a reality. Europe had been devastated by religious and dynastic wars. If any check was to be placed on the ambition of princes, and the animosities of nations, it appeared that it could be found only in a federation of the States of Europe. Such was the governing idea of the great plan, the *grand dessein*, which at the time of his death engaged the attention of Henri IV., the greatest soldier and statesman of his age, the best beloved of French kings, whose memory is still green in the hearts of his people.

The vast possessions of the House of Austria, in Spain, in Italy, in Germany, and in the Low Countries, had excited the jealousy of all other European Powers, and it was feared that the dream of universal monarchy might be converted into a reality. Henry proposed in the first place to break effectually the power of the House of

Austria, and to strip it of all its possessions in Europe except Spain. For this purpose a great confederacy had been organised. Henry himself was about to take the field, when, in a moment, the dagger of Ravaillac changed the future of Europe. But the destruction of the predominance of the House of Austria was to have been only the first step in the execution of the *grand dessein*, as it is given to us in full detail in that most fascinating of books, the Memoirs of Henry's great minister, Sully. When this first and necessary step had been taken, there was to be formed a sort of Republic of Christendom, consisting of all the States of Europe under the headship of the Emperor—so much force was there still in the tradition of the Holy Roman Empire. The object was, as Sully tells us, to deliver the nations from the crushing burden of military expenditure, to prevent those bloody wars which had desolated Europe, to establish peace, and to unite the States of the Republic of Christendom in an indissoluble bond.

That Republic was to consist of fifteen States—six hereditary kingdoms, France, Spain, England, Denmark, Sweden, and Lombardy; five elective, the Empire, the Papacy, Poland, Hungary, and Bohemia; and four republics, Venice, Italy, Switzerland, and the Low Countries. The Emperor was to be the head and first magistrate of this

republic of States. A Senate, moulded on the Amphictyonic Council, consisting of seventy deputies from the fifteen Powers, was to sit at some central point, to consult on the interests of Christendom, to arrange disputes, and to settle all the affairs, civil, political, and religious, of Europe, in its relations with Powers in other parts of the world. The confederacy of Europe was to have an army of 270,000 infantry, and 50,000 cavalry, and Henry had settled in his own mind the quota which was to be supplied by each State. This army was not to remain idle, for the Turk was to be driven out of Europe, and it is interesting to recall that the imagination of Henry as a boy had been fired by the victory of Don John at Lepanto, and that one of his famous ten wishes was to win a battle in person against the King of Spain, and another against the Sultan.

There are some features of the *grand dessein* which are of interest as showing how the world has moved and how ideas have changed since Henry and Sully lived.

Three religions, and three only, were to be recognised in Europe, the Roman Catholic, the Reformed, and the Lutheran. The passage in which Sully defends this part of the project is so curious as to deserve quotation : *

"As each of these three religions is

* *Mémoires de Sully* (edit. 1822), vol. vi., p. 113.

at the present time established in Europe, so that it does not appear that any one of the three can be destroyed, and as experience has shown the uselessness and the danger of any such attempt, there is nothing better to do than to leave all three in existence, and even to strengthen them, in such a way however, that this indulgence should not in the future open the door to all sorts of capricious imagination in the way of false dogmas, which should on the contrary be carefully stamped out at their very birth. God by visibly supporting what the Catholics are pleased to call the new religion, teaches us to behave in this way, which is in conformity with the precepts and the examples of Holy Writ."

The kingdom of Prussia as yet did not exist, and the Electorate of Brandenburg, out of which so much has grown, was not of sufficient consequence to deserve any special mention by Sully among the States of the Republic of Christendom. Indeed, readers of Carlyle may recollect that 150 years later, the King of Prussia was to the French (until after the battle of Rossbach), "*ce petit Marquis de Brandebourg à qui nous faisons l'honneur de lui faire une espèce de guerre.*"

Spain was to be compensated for the loss of her other possessions in Europe, by having assigned to her whatever she might desire to take in the

three remaining Continents of the world. There was to be no colonial Empire but that of Spain. So far indeed was Sully from having any vision of Britain beyond the seas, and of an Empire greater than that of Spain ever was, that he speaks of the British Isles as if they were a sort of continent by themselves in which their people might dwell quiet and secure, having no business with any man, and minding their own affairs.*

Sully tells us that when Henry first propounded to him the outlines of this scheme, he thought the King was speaking in jest. He soon found that the King was indeed in earnest. Sully himself became a convert, and writes of the *grand dessein* with a pathetic enthusiasm.

Such schemes of federation have often been propounded by jurists, by philosophers, and by poets. This is the single instance in which such a project was seriously entertained by a great King and a great Minister.

Fifteen years after the death of Henri IV. appeared the memorable work of Grotius, the father of International Law. The publication in 1625 of his treatise *De Jure Belli et Pacis*, made, to use the words of Hallam, an epoch in the philosophical and almost in the political history of Europe. He strenuously advocated arbitration as a means

* *Mémoires de Sully* (edit. 1822), vol. vi., p. 127.

of avoiding war. But he went further, and desired that nations should not only be induced but also obliged to settle their differences peaceably. It would be useful, he says, and is almost necessary that Congresses should be held of Christian Powers, for the decision of controversies and for compelling obedience—*imo et rationes ineantur cogendi partes, ut æquis legibus pacem accipiant.**

The language of Grotius is sober and measured, but the same can hardly be said of many of the schemes of this sort which have been launched, some of them by men bearing very eminent names.

The Abbé de St Pierre, early in the eighteenth century, proposed a scheme which involved the establishment of an army of the Federation of Europe, which would make war on any sovereign disobeying a judgment of the International Court. On the eve of the commencement of the wars of the French Revolution, Bentham prepared a plan for a universal and permanent peace, with a common tribunal, a reduction of standing armies, and the emancipation of all colonies. When the revolutionary wars were at the hottest, the philosopher Kant put forward a project for a permanent Congress of States, republican constitutions in all countries, and the abolition not

* *De Jure Belli et Pacis*, lib. ii., cap. 23 (8), sec. 4.

only of national armies, but also of national debts.

Many other schemes for national organisation have followed. In some of them, every detail has been settled even to the salaries of the officials. When we read such projects we are irresistibly reminded of the saying which has been put into the mouth of the Regent Moray, with reference to the great plan of our Scottish Reformer for the application of the property of the Church—"John is a man of God, and his scheme is a devout imagination."

No such scheme ever has taken, and no such scheme ever will take, its place in the world of realities. Europe has fallen back upon a plan less ambitious but more practicable, arbitration resting on the consent of the parties to the dispute, and we may hope that its adoption, though it never can abolish war, will at least greatly diminish its frequency.

In truth, no International Authority with power to enforce the decrees of the tribunal of arbitration is either necessary or desirable. The list of international arbitrations during the nineteenth century is a very long one —and yet there is hardly a single case in which there has been any difficulty as to compliance with the award. In the Alabama Arbitration a sum was awarded to the United States so enormous that it is reported that to the present day their Government has

not been able to find claimants for all of it. Sir Alexander Cockburn, the very distinguished representative of this country upon the Geneva Tribunal, dissented in the strongest terms from that award. But we never dreamt of refusing to comply with it. The enforcement of awards may safely be left to the good faith of the parties, and the honour of nations. There is no necessity for any International Sheriff's Officer.

Submission to arbitration must rest upon the free consent of the nations concerned. The establishment of an International Tribunal before which any State might sue another, would be a measure of very doubtful utility. Litigation of this sort between nations would probably cause more friction than it would prevent. As between individuals, there must be power to take one another to law; but the process, however necessary, is not one which is usually found to conduce to friendly feeling between the litigants. One of the highest compliments ever paid to a judge was that he was able to send away even those against whom he had decided *æquos placatosque*—the merit of the achievement was measured by the difficulty of the task. A compulsory tribunal, before which any nation might be haled by any other to answer claims which it might consider unfounded and frivolous, would indeed be a dangerous experiment. But a

tribunal whose jurisdiction rests entirely upon consent stands on a different footing altogether, and experience has shown that nations which meet in the amicable contest of voluntary arbitration are all the better friends for it. Submission to a tribunal of their own choosing of itself produces that friendly temper which only an ideal judge can achieve when the tribunal is compulsory.

The powers to be conferred upon International arbitrators may vary indefinitely according to the terms of submission. Sometimes, as in the Behring Sea Arbitration, their functions are limited to deciding on questions of International Law and of strict right. Sometimes, as in the arbitration as to the boundary of British Guiana and Venezuela, they have conferred upon them a larger discretion with power to say what is fair to be done. If such larger functions be entrusted to the tribunal, there are some questions dealt with in the past by Congresses, which may in the future be disposed of by arbitration. But International Arbitration can never altogether supersede International Congresses. Their spheres are different. If questions of large and general policy have to be settled between nations they may find it expedient to meet in Congress. Machinery which is admirably adapted for solving questions of right in particular cases, is not suited for settling such wider problems. As their spheres are different, so are their

methods. The methods of the tribunal of arbitration are judicial. There, meet in friendly rivalry the Bars of the countries concerned, and the award is the judgment of a Court. The methods of the Congress are diplomatic. It was said by an eye-witness of the Congress of Vienna, that a kingdom was partitioned or augmented at a ball, an indemnity was granted at a dinner, a constitution was projected at a *battue*, that sometimes a *bon mot* or a happy remark concluded a Treaty which would hardly have been brought to pass by many conferences and long correspondence. It was of that Congress that it was said, *Le Congrès ne marche pas, il danse.*

But, beneficial as is the rôle of Arbitration, there are some questions which no country will consent to leave to the judgment of any Court or any arbitrator. Every nation must be the guardian of its own honour. Every nation must decide for itself questions vitally affecting its independence or its essential interests. Some stakes are too big for arbitration. Some issues are too tremendous to be submitted to any but the dread ordeal of battle. It has been said that there hardly ever was a good war, and hardly ever a bad peace. But there are sometimes greater evils than war. There are some conclusions to which no nation ought to submit until everything has been staked and lost. We all rejoiced at the recent

conclusion of a Treaty of Arbitration between Great Britain and France, but from its obligations are most properly excepted questions affecting the vital interests, the honour, or the independence of either country. The United States are a Federation of a peculiarly intimate type, and have always possessed in their magnificent institution of the Supreme Court, a tribunal, described by John Stuart Mill as international, for the decision of questions arising between the different States. Yet, when the great question of the rights of these States as against the Central Government arose, it could be settled only by the gigantic war of the Secession. In the sublime language of Bacon, "Wars are suits of appeal to the tribunal of God's Justice, where there are no superiors on earth to determine the case."

But, though war cannot be abolished, the occasions of war may be greatly diminished by International Arbitration. Some wars are inevitable. They result from the collision of great principles or vital interests. Their true causes lie far deeper than the incidents which ostensibly cause the rupture. But, how many wars have there been which, without any such overpowering force behind them, have originated from comparatively small beginnings! When the passions of nations become inflamed, some trivial matter assumes monstrous proportions, like the column of smoke which in the

Tale emerged from the jar in which the genie was imprisoned. Of Discord it is as true as of Rumour—

"*Parva metu primo; mox sese attollit in auras,*
Ingrediturque solo, et caput inter nubila condit."

Take two events in our recent history, the dispute over the Alabama claims, and the dispute over the Venezuelan boundary. Either of these might well have led to war. They were both settled by arbitration, a result which was due in the one case to the statesmanship of Mr Gladstone, and in the other to that of Lord Salisbury.

It used to be said that war is the game of kings. But, perhaps the greatest danger to peace is that, if there is prolonged controversy over some matter, however insignificant in itself, the feelings and the national pride of the people of each country may be involved to such an extent as to render peaceful solution difficult or impossible. When national animosities have been awakened, any spark may kindle a conflagration. The task of the statesman in averting war is immensely facilitated if he finds ready to his hands the machinery for a peaceful settlement. How many wars might have been averted in the past if there had always been in existence, by the common consent of nations, such a tribunal as that of the Hague, whose open portals invite arbitration. I think we may

congratulate ourselves that this, the greatest, because the most practical, result of the Hague Congress, was adopted on the initiative of the British representative, Sir Julian Pauncefote. Mr Carnegie, that great benefactor to our Scottish Universities, has, I understand, with his wonted generosity, offered to provide a building worthy of such a tribunal, and we shall see before long at the Hague a true Temple of Peace.

If it be true that "the sight of means to do ill deeds, makes ill deeds done," it is no less true that the existence of such a permanent tribunal to which any question may be referred, must make for the cause of peace. The maxim, *si vis pacem, para bellum*, has a great deal of truth in it, but the very fact that there is ready to hand a great instrument of war may sometimes bring it about. May we not hope that the fact of the existence of this great instrument of peace may remove occasions of war, and that nations will more and more recognise the truth of the weighty words of our great Scottish Jurist, the first Lord Stair, "Kings and States ought not to be both judges and parties, when others can be had, but before they enter into war, they ought to demand satisfaction, . . . and not decline arbitration when an independent judge can be had."

This is not the first time that I have met you, the students of Edinburgh University, during my term of office

as Rector, and it may not be the last. Before I bid you farewell for the present, may I remind you of the concluding words of the most memorable Rectorial address ever delivered, "Work and despair not"? Do not be discouraged by failure, and never give way to despondency. There is no tonic like work. One of my predecessors, the late Lord Moncreiff, when Dean of Faculty, told his fellow-advocates, how, when a very young man, he met that most distinguished lawyer and judge, Mr Bickersteth, afterwards Lord Langdale, who said to him, "Do not be discouraged if you do not immediately succeed, for I never knew a man apply his mind sedulously to his profession for ten years without achieving success." "These words," said Mr Moncreiff, "made a deep impression upon me, and often, when all seemed dark before me, they have lightened my path and nerved me to exertion." I hope that they may have the same effect upon some of you. But whatever success may attend your efforts, remember that, while all human events are, taken in themselves, insignificant, the spirit in which they are faced is immortal. Let Browning's ideal be yours—

"One who never turned his back but marched breast forward,
Never doubted clouds would break,
Never dreamed, though right were worsted, wrong would triumph,
Held we fall to rise, are baffled to fight better,
Sleep to wake."